

1 HONORABLE RONALD B. LEIGHTON  
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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT TACOMA

10 DISCOVERORG DATA LLC,

11 Plaintiff,

12 v.

13 nDIVISION SERVICES INC,

Defendant.

CASE NO. C19-5508RBL

ORDER

14 THIS MATTER is before the Court on Defendant nDivision's Motion [Dkt. # 29] for  
15 attorneys' fees under RCW 4.28.185(5), following its successful Motion to Dismiss for lack of  
16 personal jurisdiction [Dkt. #s 10 and 27]. It seeks \$17,430. nDivision argues that DiscoverOrg  
17 has engaged in a tactic of suing out of state defendants here, without regard to the merits of its  
18 jurisdictional claims.

19 DiscoverOrg argues that it had a credible, good faith basis for filing here, and points out  
20 that the law surrounding personal jurisdiction in internet cases remains "unsettled" and  
21 conflicting. It points to cases interpreting *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d  
22 797 (9th Cir. 2004) for the proposition that virtual data theft is tantamount to a physical theft,  
23 from the plaintiff's place of business in the plaintiff's forum. See *DEX Systems, Inc., v. Deutsche*

1      | *Post AG*, 727 F App'x 276 (Mar 13, 2018). DiscoverOrg also correctly points out that it has  
2      | successfully asserted its jurisdictional theories in this district in similar cases.

3                The parties agree that the matter is addressed to the Court's discretion. In evaluating a  
4      | motion for fees under RCW 4.28.185(5), the Court should balance the twin aims of the statute:  
5      | (1) compensating an out-of-state defendant for its reasonable efforts to contest jurisdiction and  
6      | avoid harassment; and (2) encouraging the full exercise of state jurisdiction. *Scott Fetzer Co. v.*  
7      | *Weeks*, 122 Wash.2d 141, 149 (1993) (*Fetzer II*); *Scott Fetzer Co., Kirby Co. Div. v. Weeks*, 114  
8      | Wash.2d 109, 122 n.6 (1990) (*Fetzer I*). The Court's discretion to deny a motion for attorneys'  
9      | fees "is particularly broad when the circumstances of a case fall outside the heartland of RCW  
10     | 4.28.185(5)[s] purpose" of deterring frivolous, unfair, or unjust litigation in Washington.  
11     | *Johnson v. Venzon*, Case No. C12-895RSL, 2012 WL 3778877, at \*5–6 (W.D. Wash. Aug. 30,  
12     | 2012). These principles "serve to ensure that otherwise valid claims are not abandoned merely  
13     | out of fear of the possibility of fee shifting." *Id.*

14               The Court is not at all convinced that DiscoverOrg's filing here amounts to the sort of  
15     | "misconduct" that the discretionary fee-shifting mechanism is designed to dissuade. The victim  
16     | of the data theft is not "harassing" the out of state defendant by seeking to recover the value of  
17     | what was stolen, even if it filed in the wrong court.

18               The Motion for Fees [Dkt. # 29] is DENIED and the case remains closed.

19               IT IS SO ORDERED.

20               Dated this 26th day of December, 2019.

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23               Ronald B. Leighton  
24               United States District Judge